

Board of County Commissioners

Leon County, Florida

Policy No. 96-8

Title: Drug and Alcohol Testing

Date Adopted: April 9, 1996

Effective Date: July 1, 1996

Reference: Florida Workers Compensation Law; Federal Omnibus Transportation Employee Testing Act of 1991

Policy Superseded: Policy No. 94-10, Drug & Alcohol Testing, December 13, 1994

It shall be the policy of the Board of County Commissioners of Leon County, Florida, that a work environment which is free from the influence of alcohol and controlled illegal substances shall be maintained.

1. PURPOSE

As a part of the County's commitment to safeguard the health of its employees, to provide a safe place for its employees to work, and to promote a drug-free community, the Board of County Commissioners has established this policy on the use or abuse of alcohol and drugs by its employees. This policy is set up pursuant to the **Drug-free workplace program under Florida's Workers Compensation Law and the Federal Omnibus Transportation Employee Testing Act of 1991.**

Substance abuse, while at work or otherwise, seriously endangers the safety of employees as well as the general public, and creates a variety of workplace problems including increased injuries on the job, increased absenteeism, increased health care and benefit costs, increased theft, decreased morale, decreased productivity, and decline in quality of products and services provided. Although the County does not have reason to believe that employees are abusing alcohol or drugs, the only effective means of avoiding potential problems is a comprehensive policy directed against alcohol and drug abuse by employees. The application of this policy to off-duty problems is intended to be corrective rather than punitive. Under this policy, employees found to have an off-duty alcohol or drug abuse problem which impacts work performance will be given an opportunity for rehabilitation before disciplinary action is imposed.

2. APPLICABILITY

- a. All Board employees covered under the County's Workers' Compensation coverage shall be subject to Reasonable Suspicion and Return to Duty alcohol and drug testing, and may be subject to Post Accident alcohol and drug testing.

2. APPLICABILITY (Continued)

- b. All job applicants not presently employed by the Board, and Board employees who transfer to a safety-sensitive (driver) positions, shall be subject to Pre-Employment Drug Testing.
- c. Drivers/operators of commercial motor vehicles with a gross vehicle weight of 26,001 pounds or more and requires A, B, or C class commercial drivers license (CDL) shall be subject to Random, Reasonable Suspicion and Return to Duty alcohol and drug testing and may be subject to Post Accident alcohol and drug testing.
- d. All employees who are required to supervise employees who operate commercial motor vehicles and drivers/operators of commercial motor vehicles who are required by law or County Policy to possess a CDL shall be subject to Random, Reasonable Suspicion and Return to Duty alcohol and drug testing and may be subject to Post Accident alcohol and drug testing.

3. ALCOHOL AND DRUG TESTING CATEGORIES. Alcohol and drug testing is required for the following:

- a. **Pre-employment.** The County requires that drug tests shall be conducted before applicants are hired, or after an offer to hire but before safety-sensitive functions are performed for the first time. Testing also is required when employees transfer to a safety-sensitive (driver) position.
- b. **Post-accident.** The County requires that alcohol and drug tests shall be conducted on drivers whose performance could have contributed to the accident (as determined by a citation for a moving traffic violation) and for all fatal accidents even if the driver is not cited for a moving traffic violation.
- c. **Reasonable suspicion.** The County requires that alcohol and/or drug tests shall be conducted when a trained supervisor or County official has a reasonable suspicion that an employee has violated the County's drug and alcohol testing policy. For the purpose of this policy, a reasonable suspicion exists when a supervisor's suspicion is based upon specific, objective facts derived from the surrounding circumstances from which it is reasonable to infer that further investigation is warranted, provided that no such test shall be required, whenever reasonably possible, unless two persons (the second person must be in supervisory capacity) corroborate the reasonable suspicion and document it in writing.
- d. **Random.** The County requires that alcohol and drug tests shall be conducted on a random unannounced basis just before, during or just after performance of safety-sensitive functions. Random testing applies only to employees identified under Section 2(C) and (D).

3. ALCOHOL AND DRUG TESTING CATEGORIES: (Continued)

- e. **Return-to-duty and follow-up.** The County requires that alcohol and/or drug tests shall be conducted when an individual who has violated alcohol and drug conduct standards returns to duty. Follow-up tests are unannounced, and at least six (6) tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty.

4. ALCOHOL PROHIBITION.

Because alcohol is a legal substance, the rules define specific prohibited alcohol-related conduct. The use or possession of alcohol while on duty is strictly prohibited for all County employees. This prohibition is consistent with Personnel Policies and Procedures Sections 2.11 and 10.05. Performance of safety-sensitive functions is prohibited:

- a. while having a breath alcohol concentration of 0.04 percent or greater as indicated by an alcohol breath test.
- b. while using alcohol.
- c. within four hours after using alcohol.

In addition, refusing to submit to an alcohol test and using alcohol within eight hours after an accident or until tested (for drivers required to be tested) are prohibited.

- 5. **APPLICATION OF RANDOM ALCOHOL TESTING:** Random alcohol testing must be conducted just before, during, or just after a driver's performance of safety-sensitive duties. The driver is randomly selected for testing (usually from a "pool" of drivers subject to testing). The testing dates and times are unannounced and are with unpredictable frequency throughout the year. Each year, the number of random tests conducted by the employer must equal at least 25 percent of all the safety-sensitive drivers. These rules provide for adjustments to the annual random testing rate based on the violations (alcohol tests 0.04 or greater and refusals to test) in the industry subject to the FHWA regulations.
- 6. **PERFORMANCE AND CONFIRMATION OF ALCOHOL TESTING:** The rules require breath testing using evidential breath testing (EBT) devices approved by the NHTSA. The NHTSA periodically publishes a list of approved devices in the *Federal Register*. Two breath tests are required to determine if a person has a prohibited alcohol concentration. A screening test is conducted first. Any result less than 0.02 alcohol concentration is considered a "negative" test. If the alcohol concentration is 0.02 or greater, a second confirmation test must be conducted.
- 6. **PERFORMANCE AND CONFIRMATION OF ALCOHOL TESTING** (Continued): The driver and the individual (called a breath alcohol technician [BAT]) conducting the breath test complete the alcohol testing form to ensure that the results are properly

recorded. The confirmation test, if required, must be conducted using an EBT that prints out the results, date and time, a sequential test number, and the name and serial number of the EBT to ensure reliability of the results. The confirmation test results determine any actions to be taken. Testing procedures that ensure accuracy, reliability and confidentiality of test results are outlined in the Part 40 rule. The procedures include training and proficiency requirements for the breath alcohol technicians (BAT), quality assurance plans for the breath testing devices (including calibration requirements for a suitable test location), and protection of driver test records.

Law enforcement officers will not conduct the tests as part of roadside or other inspections. However, under certain circumstances, post-accident tests conducted by law enforcement personnel will be acceptable. Any individual who conducts the testing must be trained to operate the EBT and be proficient in the breath testing procedures.

7. **CONSEQUENCES OF A POSITIVE ALCOHOL MISUSE:** Drivers who engage in prohibited alcohol conduct must be immediately removed from safety-sensitive functions. Drivers who have engaged in alcohol misuse cannot return to safety-sensitive duties until they have been evaluated by a substance abuse professional and have complied with any treatment recommendations to assist them with an alcohol problem. To further safeguard transportation safety, drivers who have any alcohol concentration (defined as 0.02 or greater) when tested just before, during or just after performing safety-sensitive functions must also be removed from performing such duties for 24 hours. If a driver's behavior or appearance suggests alcohol misuse, a "reasonable suspicion" alcohol test must be conducted. If a breath test cannot be administered, the driver must be removed from performing safety-sensitive duties for at least 24 hours. A violation of these employer-based testing rules is not placed on, nor does it affect, the driver's CDL record.
8. **REHABILITATION:** Drivers who violate the alcohol misuse rules will be referred to a substance abuse professional for evaluation. Any treatment or rehabilitation would be provided in accordance with the County's policy (Employee Assistance Program [EAP]). The County is not required under these rules to provide rehabilitation, pay for treatment, or reinstate the driver in his/her safety-sensitive position. If the County decides to allow a driver to return to safety-sensitive duties, the drug coordinator must ensure that the driver:
 - a. has been evaluated by a substance abuse professional;
 - b. has complied with any recommended treatment;
 - c. has taken a return-to-duty alcohol test (with a result less than 0.02); and
 - d. is subject to unannounced follow-up alcohol tests.
8. **REHABILITATION** (continued): The County's Employee Assistance Program (EAP) is available to assist employees with alcohol and drug problems. An employee seeking assistance may contact his supervisor, the Human Resources Division's EAP Coordinator or the EAP provider directly. An employee may also seek assistance through his or her

health benefit plan.

9. **CONFIDENTIAL RECORDS:** Driver alcohol testing records are confidential. Test results and other confidential information may be released only to the County and the substance abuse professional. Any other release of this information is only with the driver's consent. If a driver initiates a grievance, hearing, lawsuit or other action as a result of a violation of these rules, the County may release relevant information to the decision maker.
10. **DRUG TESTING:** The DOT drug and alcohol testing procedures rule (49 CFR Part 40) sets forth the procedures for drug testing in the FHWA industries. Drug testing is conducted by analyzing a driver's urine specimen. The analysis is performed at laboratories certified and monitored by the Department of Health and Human Services (DHHS). There are over 90 DHHS-certified drug testing laboratories located throughout the United States. The list of DHHS approved laboratories is published in the *Federal Register*. The driver provides a urine specimen in a location that affords privacy and the "collector" seals and labels the specimen, completes a chain-of-custody document, and prepares the specimen and accompanying paperwork for shipment to a drug testing laboratory. The specimen collection procedures and chain of custody ensure that the specimen's security, proper identification and integrity are not compromised. The Omnibus Act requires that drug testing procedures for commercial motor vehicle drivers include split specimen procedures. Each urine specimen is subdivided into two bottles labeled as a "primary" and a "split" specimen. Both bottles are sent to a laboratory. If the analysis of the primary specimen confirms the presence of illegal, controlled substances, the driver has 72 hours to request a split specimen be sent to another DHHS certified laboratory for analysis. This split specimen procedure essentially provides the driver with an opportunity for a "second opinion."
11. **TYPES OF DRUGS PROHIBITED:** The drug rules prohibit any unauthorized use of the controlled substances. Illicit use of drugs by safety-sensitive drivers is prohibited on or off duty. The FHWA has some additional rules that prohibit the use of legally prescribed controlled substances (such as barbiturates, amphetamines, morphine, etc.) by safety-sensitive drivers. If using an over-the-counter or prescription drug which is in any way influencing the employee's ability to perform his job (i.e., causing drowsiness, slowing reaction times, distorting perception, etc.), he must request temporary reassignment or leave as appropriate. Under no circumstances shall an employee work in a condition which increases risk to life, limb or property. All urine specimens are analyzed for the following drugs:
 - a. Marijuana (THC metabolite)
 - b. Cocaine
 - c. Amphetamines

- d. Opiates (including heroin)
- e. Phencyclidine (PCP)

The testing is a two-stage process. First, a screening test is performed. If it is positive for one or more of the drugs, then a confirmation test is performed for each identified drug using state-of-the-art gas chromatography/mass spectrometry (GC/MS) analysis. GC/MS confirmation ensures that over-the-counter medications or preparations are not reported as positive results.

12. **INTERPRETATION OF THE LABORATORY RESULTS:** All drug test results are reviewed and interpreted by a physician (Medical Review Officer [MRO]) before they are reported to the employer. If the laboratory reports a positive result to the MRO, the MRO contacts the driver (in person or by telephone) and conducts an interview to determine if there is an alternative medical explanation for the drugs found in the driver's urine specimen. For all the drugs except PCP, there are some limited, legitimate medical uses that may explain the positive test result. If the driver provides appropriate documentation and the MRO determines that it is legitimate medical use of the prohibited drug, the drug test result is reported as negative to the County.
13. **CONSEQUENCES OF A POSITIVE DRUG TEST:** As with an alcohol misuse violation, a driver must be removed from safety-sensitive duty if he/she has a positive drug test result. The removal cannot take place until the MRO has interviewed the driver and determined that the positive drug test resulted from the unauthorized use of a controlled substance. A driver cannot be returned to safety-sensitive duties until he/she has been evaluated by a substance abuse professional or MRO, has complied with recommended rehabilitation, and has a negative result on a return-to-duty drug test. Follow-up testing to monitor the driver's continued abstinence from drug use may be required.
14. **RANDOM DRUG TESTING:** The County is responsible for conducting random, unannounced drug tests. The total number conducted each year must equal at least 50% of the safety-sensitive drivers. Some drivers may be tested more than once each year; some may not be tested at all depending on the random selection. Random testing for drugs does not have to be conducted in immediate time proximity to performing safety-sensitive functions. Once notified of selection for testing, however, a driver must proceed to a collection site to accomplish the urine specimen collection. The FHWA has issued a proposal to permit adjustment to the random drug testing rate. The proposal is similar to what is required for random alcohol testing. The random drug testing rate would be determined annually based upon the random positive rate for the FHWA industry.
15. **EDUCATION AND TRAINING:** The Human Resources Division will provide information on drug and alcohol use and treatment resources to safety-sensitive drivers. All supervisors and employee safety-sensitive drivers must attend at least two hours of training on the signs and symptoms of drug and alcohol abuse. This training is necessary to assist supervisors and employees in making appropriate determinations for reasonable suspicion testing.

The Human Resources Division shall conduct an ongoing drug-free awareness program to inform employees about the County's alcohol and drug policy; the dangers of drugs/alcohol abuse; penalties for the use, sale, possession or manufacture of drugs/alcohol at work; the availability of drug/alcohol counseling; and information about the Employee Assistance Program (EAP).

- 16. REHABILITATION:** Drivers who violate the drug abuse rules will be referred to a substance abuse professional for evaluation. Any treatment or rehabilitation would be provided in accordance with the County's Employee Assistance Program (EAP) policy. The County is not required under these rules to provide rehabilitation, pay for treatment, or reinstate the driver in his/her safety-sensitive position. If the County decides to allow a driver to return to safety-sensitive duties, the drug coordinator must ensure that the driver:
- a. has been evaluated by a substance abuse professional;
 - b. has complied with any recommended treatment;
 - c. has taken a return-to-duty alcohol test (with a result less than 0.02); and
 - d. is subject to unannounced follow-up alcohol tests.

The County's Employee Assistance Program (EAP) is available to assist employees with alcohol and drug problems. An employee seeking assistance may contact his supervisor, the Human Resources Division's EAP Coordinator or the EAP provider directly. An employee may also seek assistance through his or her health benefit plan.

- 17. CONFIDENTIAL RECORDS:** Driver drug testing results and records are maintained under strict confidentiality by the employer, the drug testing laboratory, and the medical review officer. They cannot be released to others without the written consent of the driver. Exceptions to these confidentiality provisions are limited to a decision maker in arbitration, litigation or administrative proceedings arising from a positive drug test. Statistical records and reports are maintained by the County and the drug and alcohol testing laboratories. This information is aggregated data and is used to monitor compliance with the rules and to assess the effectiveness of the drug and alcohol testing programs.

- 18. COMMUNICATION OF POLICY TO APPLICANTS/EMPLOYEES:** All County employees in safety sensitive positions and/or functions will receive a copy of this policy.
- a. The Human Resources Division shall be responsible for communicating this policy and providing copies of the policy to newly hired safety-sensitive employees (including seasonal recreation program employees).
 - b. All County departments shall be required to prominently display this policy and any related information material on all employee bulletin boards.

- 19. REFUSAL TO COOPERATE WITH ALCOHOL/DRUG TEST:** An applicant's tampering with the alcohol/drug test or failing to submit to the required pre-employment drug test shall be considered as a request for withdrawal from consideration for the position for which he/her has applied.

An employee's tampering with the alcohol/drug test or failing to submit to an alcohol/drug test shall be considered insubordination and shall be grounds for dismissal.

- 20. CONSEQUENCES OF VIOLATION OF POLICY:** An employee found to be in violation of any provision of this policy shall be subject to disciplinary action up to and including dismissal. Conditions which may warrant the retention of said employee may include, but not be limited to, the nature of job, length of service, quality of job performance, and nature of offense.
- 21. RIGHT TO APPEAL:** An applicant or employee who feels he/she has not been treated fairly with regard to this policy may file a **grievance** pursuant to the County's Personnel Policies and Procedures.